

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN B. CAPPONI as Administrator of the Estate
of LOUISE THERESA CAPPONI,

NOTICE OF MOTION

Plaintiff,

08 Civ. 4449(LTS)(DFE)

- against -

JOANN M. MURPHY, WILLOW LANE ASSOCIATES, LP,
DENNIS CAPPONI and COUNTRY BANK,

Defendants.

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C O U N S E L O R S :

PLEASE TAKE NOTICE, that upon the annexed declaration of EDWARD COHN, Esq., dated August 28, 2008, the Memorandum of Law and the pleadings and proceedings previously had herein, and upon the exhibits annexed hereto, the undersigned will move this Court before the Hon. Laura Taylor Swain at the Courthouse located at 500 Pearl Street, in the County, City and State of New York, on the 23rd day of September, 2008, at 9:30 o'clock in the forenoon or as soon thereafter as counsel may be heard, for an order dismissing Defendants' counterclaims pursuant to the Federal Rules of Civil Procedure §§ 12(b)(1) and 12(b)(6) and further for an order disqualifying Defendants' counsel from representing Defendants due to a conflict of interest and due to the fact that Defendants' counsel will be called to testify as a witness in this proceeding and for such other and further relief as to this Court may be just and proper.

Pursuant to ¶ 2(B) of the Individual Practices of Judge Laura Taylor Swain
Movant's counsel attempted to resolve the issues raised in this motion by having telephone

conferences with defendants' counsel on August 4 and August 6, and August 27, 2008. Further movant wrote a letter to defendants' counsel on August 19, 2008. Defense counsel's written response dated August 21, 2008, indicated that the parties would not be able to resolve these issues without the court's intervention.

Dated: New York, New York
August 28, 2008

Yours etc.,

IRWIN, LEWIN, COHN & LEWIN, P.C.

By:

S/

Edward Cohn (EC-2225)
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